

Kevin Meyer
Lieutenant Governor
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LT.GOVERNOR@ALASKA.GOV

**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

TO: Kady Levale, Office of the Lieutenant Governor
465.3509

FROM: April Simpson, Office of the Lieutenant Governor 
465.4081

DATE: December 2, 2020

RE: Filed Permanent Regulations: Office of the Lieutenant Governor

Office of the Lieutenant Governor Regulations re: remote online notarization
(6 AAC 88)

Attorney General File:	2020200562
Regulation Filed:	12/02/2020
Effective Date:	01/01/2021
Print:	237, April 2021

cc with enclosures: Harry Hale, Department of Law
Judy Herndon, LexisNexis

ORDER ADOPTING CHANGES TO REGULATIONS
OF THE OFFICE OF THE LIEUTENANT GOVERNOR

The attached six pages of regulations, dealing with 6 AAC 88 Notarizations specifically notarial acts performed for remotely-located individuals, are adopted and certified to be a correct copy of the regulation changes that the Office of the Lieutenant Governor adopts under the authority of AS 44.50.072, AS 44.50.075 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

In considering public comments, the Office of the Lieutenant Governor paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes adopted under this order take effect on the 30th day after they have been filed by the lieutenant governor as provided in AS 44.62.180.

Date: _____

Digitally signed by Joshua M.
Applebee
Date: 2020.12.01 14:36:58 -09'00'
Joshua M. Applebee
Josh Applebee, Chief of Staff, Office of the
Lieutenant Governor

April Simpson for

FILING CERTIFICATION

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that on

December 2, 2020, at 2:49 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

for Kevin Meyer
Lieutenant Governor

Effective: January 1, 2021.

Register: 237, April 2021.

**LIMITED DELEGATION OF AUTHORITY
FOR ADOPTING REGULATIONS**

Under as 44.17.010, the authority and responsibility for adopting regulations of the Office of the Lieutenant Governor under the Alaska Administrative Procedure Act during the period November 25, 2020, through January 1, 2021, is delegated to Josh Applebee, Chief of Staff.

Date: November 24, 2020

A handwritten signature in black ink that reads "Kevin Meyer". The signature is written in a cursive style and is positioned above a horizontal line.

Kevin Meyer, Lieutenant Governor

State of Alaska
Anchorage

FOR DELEGATION OF THE LIEUTENANT GOVERNOR'S AUTHORITY

**I, KEVIN MEYER, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA,
designate the following state employees to perform the Administrative Procedures Act
filing functions of the Office of the Lieutenant Governor:**

**Josh Applebee, Chief of Staff
Kady Levale, Notary Administrator
April Simpson, Regulations and Initiatives Specialist**

**IN TESTIMONY WHEREOF, I have
signed and affixed the Seal of the State of
Alaska, in Juneau, on December 11th,
2018.**



Kevin Meyer
.....

**KEVIN MEYER
LIEUTENANT GOVERNOR**

6 AAC is amended by adding a new chapter to Part 7 to read:

Chapter 88. Notarizations.

Section

- 10. Applicability
- 20. Application fee
- 30. Standards for communication technology
- 40. Standards for identity proofing
- 50. Form of notarial certificates for remote notarial acts
- 990. Definitions

6 AAC 88.010. Applicability. This chapter applies to persons performing notarial acts established under AS 44.50. (Eff. 1 / 1 / 2021, Register 237)

Authority: AS 44.50.033 AS 44.50.072

6 AAC 88.020. Application fee. (a) The application fee for commission as a notary public is \$40.

(b) In addition to the application fee under (a) of this section, the application fee to perform notarial acts using communication technology for remotely located individuals is \$100 for an initial notary public commission. If a notary public is commissioned under AS 44.50.010 at the time the notary public applies to perform remote notarial acts as described in this subsection, that notary public shall pay an application fee of \$25 for each remaining year of the notary public's commission. (Eff. 1 / 1 / 2021, Register 237)

Authority: AS 44.50.033 AS 44.50.072

6 AAC 88.030. Standards for communication technology. (a) Communication technology must provide for synchronous audio-video feeds of sufficient video resolution and audio clarity to enable the notary public and remotely located individual to see and speak with each other in real time. The process must provide a means for the notary public to reasonably confirm that a record before the notary public is the same record in which the remotely located individual made a statement or on which the remotely located individual executed a signature.

(b) Communication technology must provide reasonable security measures to prevent unauthorized access to

- (1) the live transmission of the audio-video feeds;
- (2) the methods used to perform the identity proofing; and
- (3) the electronic record that is the subject of the remote online notarization.

(c) If a remotely located individual leaves the session before the completion of the identity verification, the individual must restart the identity proofing process from the beginning.

(Eff. 1 / 1 / 2021 , Register 237)

Authority: AS 44.50.072 AS 44.50.075

6 AAC 88.040. Standards for identity proofing. (a) If a notary public does not have personal knowledge or satisfactory evidence of the identity of a remotely located individual under (d) of this section, the notary public must reasonably verify the individual's identity through a multi-factor authentication procedure as provided in (a) - (c) of this section. The procedure must analyze the individual's identification credential that is the subject of remote presentation against trusted third-party data sources, bind the individual's identity to the individual following a successful knowledge-based authentication assessment, and permit the

notary public to visually compare the identification credential and the individual. Credential analysis and identity proofing must be performed by a reputable third party that has provided evidence to the notary public of its ability to satisfy the requirements of this chapter.

(b) Credential analysis must use public or private data sources to confirm the validity of the identification credential that is the subject of remote presentation by a remotely located individual and must, at a minimum,

(1) use automated software processes to aid the notary public in verifying the identity of each remotely located individual;

(2) require the identification credential to pass an authenticity test, consistent with sound commercial practices, that uses appropriate technologies to confirm the integrity of visual, physical, or cryptographic security features, and to confirm that the identification credential is not fraudulent or inappropriately modified;

(3) use information held or published by the issuing source or an authoritative source, as available and consistent with sound commercial practices, to confirm the validity of personal details and identification credential details; and

(4) enable the notary public to visually compare for consistency the information and photograph on the identification credential and the remotely located individual as viewed by the notary public in real time through communication technology.

(c) Identity proofing may be performed by means of a knowledge-based authentication assessment. The assessment is successful if it meets the following requirements:

(1) the remotely located individual must answer a quiz of a minimum of five questions related to the individual's personal history or identity formulated from public or private data sources;

- (2) each question must have a minimum of five possible answer choices;
 - (3) at least 80 percent of the questions must be answered correctly;
 - (4) all questions must be answered within two minutes;
 - (5) if the remotely located individual fails the first attempt, the individual may retake the quiz one time within 24 hours;
 - (6) during a retake of the quiz, a minimum of 40 percent of the prior questions must be replaced;
 - (7) if the remotely located individual fails the second attempt, the individual is not allowed to retry with the same online notary public until at least 24 hours after the second failed attempt; and
 - (8) the notary public may not be able to see or record the questions or answers.
- (d) The multi-factor authentication requirements in (a) - (c) of this section do not apply if
- (1) the notary public has personal knowledge of the identity of the individual; or
 - (2) the individual is identified by oath or affirmation of a credible witness subject to the following requirements:
- (A) to be a credible witness, the witness must have personal knowledge of the remotely located individual;
 - (B) the notary public must have personal knowledge of the credible witness or must have satisfactory evidence of the identity of the credible witness through verification of the witness's identity by multi-factor authentication in accordance with (a) - (c) of this section;
 - (C) a credible witness may be outside the physical presence of the notary public or remotely located individual if the notary public, credible witness, and remotely

located individual can communicate by using communication technology.

(Eff. 1 / 1 / 2021 , Register 237)

Authority: AS 44.50.072 AS 44.50.075

6 AAC 88.050. Form of notarial certificates for remote notarial acts. A notarial certificate for a remote online notarization is sufficient if it is substantially in a form prescribed by the laws and regulations of the state and conforms with AS 44.50.075(c) by including a statement that the notarization was performed using communication technology.

(Eff. 1 / 1 / 2021 , Register 237)

Authority: AS 44.50.072 AS 44.50.075

6 AAC 88.990. Definitions. In this chapter, unless the context requires otherwise,

- (1) “credential analysis” has the meaning given in AS 44.50.075(b)(1)(C)(ii);
- (2) “electronic record” has the meaning given in AS 09.80.190;
- (3) “identification credential” means a non-expired passport, driver's license, or form of government-issued identification document that contains the signature and photograph of the individual;
- (4) “multi-factor authentication” means a security system that requires more than one method of authentication from independent categories of credentials to verify the user's identity for a login or other transaction;
- (5) “notarial certificate” means the portion of a notarized document that is completed by a notary public and that bears the notary public's signature, seal, and language as required by law;

(6) "person" has the meaning given in AS 01.10.060;

(7) "personal knowledge" means that the individual appearing before the notary public is known to the notary public through dealings sufficient to provide reasonable certainty that the individual has the identity claimed;

(8) "real time" means the actual span of uninterrupted, simultaneous communication using audio-video feeds during which all parts of an online notarial act occur excluding issues or buffering that does not materially affect the substantive communication between the notary public and the individual;

(9) "remote online notarization" or "remote notarial act" means a notarial act performed by means of communication technology under this chapter;

(10) "remote presentation" means transmission to a notary public through communication technology of an image of a remotely located individual's identification credential that is of sufficient quality to enable the notary public to reasonably identify the remotely located individual and to perform credential analysis. (Eff. 1 / 1 / 2021, Register 237)

Authority: AS 44.50.072 AS 44.50.075

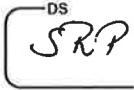
MEMORANDUM

State of Alaska Department of Law

To: The Honorable Kevin Meyer
Lieutenant Governor

Date: December 2, 2020

File No.: 2020200562

Thru: Susan R. Pollard 
Chief Assistant Attorney General
and Regulations Attorney
Legislation and Regulations Section

Tel. No.: 465-3600

From: Steven C. Weaver *SCW*
Senior Assistant Attorney General
Legislation and Regulations Section

Re: Office of the Lieutenant Governor
regulations re: remote online
notarization (6 AAC 88)

The Department of Law has reviewed the attached regulations of the Office of the Lieutenant Governor against the statutory standards of the Administrative Procedure Act. Based upon our review, we find no legal problems. This memorandum constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations. The regulations were adopted by your office after the close of the public comment period. As required under amendments to AS 45.50 that take effect January 1, 2021 under ch. 24, SLA 2020 (SSHB 124)--and in particular, to implement AS 45.50.075 (notarial act performed for remotely located individual), added by sec. 10, ch. 24, SLA 2020--the regulations establish requirements, procedures, and fees for notaries public to conduct remote online notarization, including communication technology, identity proofing, and forms of notarial certificates for notarial acts performed remotely or outside the physical presence of a notary public by means of communication technology.

So that the effective date of the regulations is in line with the January 1, 2021 effective date set under sec. 21, ch. 24, SLA 2020 for the amendments to AS 45.50, we recommend that the regulations be filed on December 2, 2020.

The October 4, 2020 public notice and the December 1, 2020 adoption order both state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 is not required.

SCW

cc w/enc.: Joshua M. Applebee, Chief of Staff
Office of the Lieutenant Governor

April Simpson, Regulation and Initiative Specialist
Office of the Lieutenant Governor

Kady Levale, Notary Commission Administrator
Office of the Lieutenant Governor

Morgan A. Griffin, Assistant Attorney General
Labor and State Affairs Section

NOTICE OF PROPOSED CHANGES ON ALASKA NOTARIAL LAW
IN THE REGULATIONS OF THE OFFICE OF THE LIEUTENANT GOVERNOR

The Office of the Lieutenant Governor proposes to adopt regulations in Title 6 of the Alaska Administrative Code, dealing with notarial acts performed for remotely-located individuals, including the following:

6 AAC 88 Notarizations is proposed to changes as follows: The proposed regulations would establish standards for communication technology, identity proofing, and notarial certificate forms for notarial acts performed for individuals outside the physical presence of a notary public. The regulations are being proposed to carry out the purposes of AS 44.50.

The proposed regulations would also set out the fees notary publics must pay if they wish to perform remote notarial acts using communication technology during their commission.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to the Office of the Lieutenant Governor PO Box 110015, Juneau, AK 99811-0015. Additionally, the Office of the Lieutenant Governor will accept comments by electronic mail at notary@alaska.gov. Comments may also be submitted through the Alaska Online Public Notice System, by accessing this notice on the system and using the comment link. The comments must be received by November 4, 2020.

You may submit written questions relevant to the proposed action to Kady Levale at notary@alaska.gov and Office of the Lieutenant Governor PO Box 110015, Juneau, AK 99811-0015. The questions must be received at least 10 days before the end of the public comment period. The Office of the Lieutenant Governor will aggregate its response to substantially similar questions and make the questions and responses available on the Alaska Online Public Notice System.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Kady Levale at notary@alaska.gov and 907-465-3509 not later than November 4, 2020 to ensure that any necessary accommodations can be provided.

A copy of the proposed regulation changes is available on the Alaska Online Public Notice System and by contacting Kady Levale at notary@alaska.gov and 907-465-3509.

A copy of material proposed for adoption by reference is available on the Alaska Online Public Notice System.

After the public comment period ends, the Office of the Lieutenant Governor will either adopt the proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulation may be different from that of the proposed regulation. You should comment during the time allowed if your interests could be affected.

Statutory authority: AS 44.50.072; AS 44.50.075

Statutes being implemented, interpreted, or made specific: AS 44.50.033; AS 44.50.072; AS 44.50.075

Fiscal information: The proposed regulation changes are not expected to require an increased appropriation.

Date: September 30, 2020



Kevin Meyer
Lieutenant Governor
State of Alaska

ADDITIONAL REGULATION NOTICE INFORMATION
(AS 44.62.190(d))

1. Adopting agency: Office of the Lieutenant Governor
2. General subject of regulation: Notarial acts performed for remotely-located individuals
3. Citation of regulation (may be grouped): 6 AAC 88
4. Department of Law file number, if any: 2020200562

5. Reason for the proposed action:

- () Compliance with federal law or action (identify): _____
- (X) Compliance with new or changed state statute
- () Compliance with federal or state court decision (identify): _____
- () Development of program standards
- () Other (identify): _____

6. Appropriation/Allocation:

Department - Office of the Governor
Appropriation – Office of the Lieutenant Governor
Allocation – Notary

7. Estimated annual cost to comply with the proposed action to:

A private person: \$25

Another state agency: \$0

A municipality: \$25

8. Cost of implementation to the state agency and available funding (in thousands of dollars):

	Initial Year FY <u>2021</u>	Subsequent Years
Operating Cost	<u>\$ 0</u>	<u>\$ 0</u>
Capital Cost	<u>\$ 0</u>	<u>\$ 0</u>
1002 Federal receipts	<u>\$ 0</u>	<u>\$ 0</u>
1003 General fund match	<u>\$ 0</u>	<u>\$ 0</u>
1004 General fund	<u>\$ 0</u>	<u>\$ 0</u>
1005 General fund/ program	<u>\$ 0</u>	<u>\$ 0</u>


Other (identify) \$ 0 \$ 0

9. The name of the contact person for the regulation:

Name: Kady Levale
Title: Notary Commission Administrator
Address: P.O. Box 110015 Juneau, 99811-0015
Telephone: 907-465-3509
E-mail address: notary@alaska.gov

10. The origin of the proposed action:

Staff of state agency
 Federal government
 General public
 Petition for regulation change⁷
 Other (identify): _____

11. Date: 9/30/2020 Prepared by: 
Name (printed): Kady Levale
Title (printed): Notary Commission Administrator
Telephone: 907-465-3509

ANCHORAGE DAILY NEWS

AFFIDAVIT OF PUBLICATION

Account #: 393210
PO Box 110001, JUNEAU, AK 99811

Order #: W0018235

Cost: \$383.5

STATE OF ALASKA
THIRD JUDICIAL DISTRICT

Lisi Misa being first duly sworn on oath deposes and says that she is a representative of the Anchorage Daily News, a daily newspaper. That said newspaper has been approved by the Third Judicial Court, Anchorage, Alaska, and it now and has been published in the English language continually as a daily newspaper in Anchorage, Alaska, and it is now and during all said time was printed in an office maintained at the aforesaid place of publication of said newspaper. That the annexed is a copy of an advertisement as it was published in regular issues (and not in supplemental form) of said newspaper on

10/04/2020

and that such newspaper was regularly distributed to its subscribers during all of said period. That the full amount of the fee charged for the foregoing publication is not in excess of the rate charged private individuals.

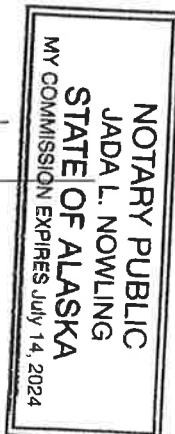
Signed _____

Subscribed and sworn to before me
this 5th day of October 2020.

Notary Public in and for
The State of Alaska.
Third Division
Anchorage, Alaska

MY COMMISSION EXPIRES

7/14/2024



NOTICE OF PROPOSED CHANGES ON ALASKA NOTARIAL LAW IN THE REGULATIONS OF THE OFFICE OF THE LIEUTENANT GOVERNOR

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Statutory authority: AS 44.50.072; AS 44.50.075

Statutes being implemented, interpreted, or made specific: AS 44.50.033; AS 44.50.072; AS 44.50.075

Fiscal information: The proposed regulation changes are not expected to require an increased appropriation.

Date: September 30, 2020
/s/ Kevin Meyer
Lieutenant Governor
State of Alaska

Published: October 4, 2020

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION
AND FURNISHING OF ADDITIONAL INFORMATION

I, Kady Levale, Notary Commission Administrator, of the Office of the Lieutenant Governor, under penalty of perjury, certify the following:

As required by AS 44.62.190, notice of the proposed adoption of changes to 6 AAC 88 Notarial acts performed for remotely-located individuals has been given by being

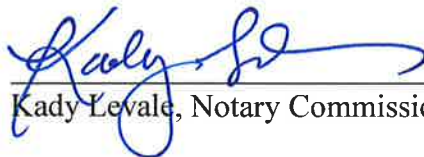
- (1) published in a newspaper or trade publication;
- (2) furnished to every person who has filed a request for notice of proposed action with the state agency;
- (3) furnished to appropriate state officials;
- (4) furnished to interested persons;
- (5) furnished to the Department of Law, along with a copy of the proposed regulation;
- (6) furnished electronically to incumbent State of Alaska legislators;
- (7) posted on the Alaska Online Public Notice System as required by AS 44.62.175(a)(1) and (b) and 44.62.190(a)(1).

As required by AS 44.62.190, additional regulation notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons and those in (2), (4) and (6) of the list above. The additional regulation notice information also has been posted on the Alaska Online Public Notice System.

There is no notary public or other official empowered to administer oaths available to notarize this document as a result of social distancing requirements implemented statewide.

I certify under penalty of perjury that the foregoing is true.

Date: 11/12/2020



Kady Levale, Notary Commission Administrator

State of Alaska
Juneau, AK 99801

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Kady Levale, Notary Commission Administrator, of the Office of the Lieutenant Governor under penalty of perjury, state the following:

In compliance with AS 44.62.215, the Office of the Lieutenant Governor has kept a record of its use or rejection of factual or other substantive information that was submitted in writing as public comment and that was relevant to the accuracy, coverage, or other aspect of the Office of the Lieutenant Governor regulation on proposed changes to Title 6 of the Alaska Administrative Code, dealing with notarial acts performed for remotely-located individuals.

There is no notary public or other official empowered to administer oaths available to notarize this document as a result of social distancing requirements implemented statewide.

I certify under penalty of perjury that the foregoing is true.

Date: 11/12/2020



Kady Levale, Notary Commission Administrator

State of Alaska
Juneau, AK 99801